

BLUE MOUNTAINS BIODIVERSITY PROJECT ET AL.

IBLA 94-692, 94-726, 94-727

Decided July 7, 1997

Appeal from a decision of the Prineville, Oregon, District Manager, Bureau of Land Management, to implement the Prineville District Integrated Weed Management program. EA-OR-053-3-062.

Appeals dismissed as to certain Appellants; Decision affirmed.

1. Administrative Procedure: Administrative Review—Rules of Practice: Appeals:
Standing to Appeal

Standing to appeal requires that an appellant be a party to the case adversely affected by the decision under appeal. A group that has not participated in agency decisionmaking prior to approval by BLM of an integrated weed management program is not a "party to a case" within the meaning of 43 C.F.R. § 4.410(a) for purposes of appeal.

2. Environmental Policy Act—Environmental Quality: Environmental Statements—
National Environmental Policy Act of 1969: Environmental Statements

A finding of no significant environmental impact with respect to a local integrated weed management program based on an environmental assessment which is tiered to a programmatic EIS analyzing the broader and cumulative impacts of vegetation management will be affirmed when the record establishes that BLM took a "hard look" at the environmental impacts of the activity, considered reasonable alternatives, applied mitigating measures to avoid significant adverse environmental impacts, and appellants have not shown significant environmental impacts other than those analyzed in the tiered EIS.

APPEARANCES: Karen Coulter, Fossil, Oregon, for herself and Blue Mountains Biodiversity Project; Kathleen Simpson Myron, Canby, Oregon, for Oregon Natural Desert Association; Donald P. Lawton, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Blue Mountains Biodiversity Project (Blue Mountains) and others have appealed from the Prineville District Integrated Weed Management (IWM) Environmental Assessment (EA) OR-053-3-062 (March 1994), the Finding of No Significant Impact (FONSI), and the Decision Record implementing the IWM program approved by the Prineville District Manager, Bureau of Land Management (BLM), on June 16, 1994. 1/

The Decision Record implements the proposed action (alternative 1) considered by BLM in the EA. The purpose of the proposed action is to continue and to expand the Prineville District's noxious weed control and eradication efforts using an ecosystem-based IWM program for all public lands District-wide for the years 1993 through 1998. (EA at 1, 4.) Control measures in the IWM program include cultural practices (preventative), physical control practices, biological control practices, and chemical (herbicide) control practices. (EA at 3.) Appellants' objections to the IWM program focus on the use of herbicide spraying (specifically, the application of 2,4-D, Picloram, Dicamba, and Glyphosate) in the control of noxious weeds. Appellants requested a stay of this activity in their notices of appeal.

[1] By Order dated September 1, 1994, the Board denied the petitions for stay of implementation of BLM's decision. 2/ The Board's Order also

1/ The IBLA docket numbers and corresponding Appellants are set forth as follows:

IBLA 94-692	Karen Coulter Blue Mountains Biodiversity Project Native Forest Council Oregon Natural Resources Council
IBLA 94-726	Oregon Natural Desert Association
IBLA 94-727	Jan Wroncy Gaia Vision Canaries Who Sing

2/ In denying the Motion for Stay in this case, we noted that the control of weeds by application of herbicides to public lands in Oregon has been the subject of litigation in the Federal courts. A 1984 injunction imposed by the district court barred use in Oregon of the four herbicides which are the primary focus of this appeal, namely 2,4-D, Picloram, Glyphosate, and Dicamba. In March 1987, the Government moved to dissolve that portion of the injunction which precluded BLM from using these herbicides to control and eradicate noxious weeds on the public lands administered by BLM in Oregon. In Northwest Coalition for Alternatives to Pesticides (NCAP) v. Lyng, 673 F. Supp. 1019 (D. Or. 1987), the United States District Court for the District of Oregon partially dissolved the 1984 injunction to permit the use of the four herbicides to control and eradicate noxious weeds on public lands in Oregon. The Ninth Circuit Court of Appeals upheld the District Court's decision to partially dissolve the injunction. NCAP v. Lyng, 844 F.2d 588 (9th Cir. 1988).

noted that the record before it presented certain issues of standing stating that

the Native Forest Council and Oregon Natural Resources Council named as additional appellants in IBLA 94-692 apparently did not offer comments on the EA or protest the action prior to this appeal. Appellants Jan Wroncy, Gaia Vision, and Canaries Who Sing similarly appear to have not participated in this matter prior to filing an appeal.

(Order of Sept. 1, 1994, at 6.) Accordingly, we allowed Appellants Native Forest Council (NFC), Oregon Natural Resources Council (ONRC), Jan Wroncy, Gaia Vision, and Canaries Who Sing 30 days from receipt of the order to show cause why their appeals should not be dismissed for lack of standing. To have standing to appeal from a BLM decision under 43 C.F.R. § 4.410(a), the appellant must be both a party to the case and adversely affected by that decision. See Stanley Energy, Inc., 122 IBLA 118, 120 (1992); Storm Master Owners, 103 IBLA 162, 177 (1988). To be a "party to a case" a person must have actively participated in the decisionmaking process regarding the subject matter of the appeal. The Wildemess Society, 110 IBLA 67, 70 (1989); Mark S. Altman, 93 IBLA 265, 266 (1986); Utah Wildemess Association, 91 IBLA 124 (1986) 3/; see also Sharon Long, 83 IBLA 304, 307-08 (1984). The purpose of limiting standing to appeal to a party to the case is to afford an intelligent framework for administrative decisionmaking, based on the assumption that BLM will have had the benefit of the input of such a party in reaching its decision. See Utah Wildemess Association, supra, at 128-29; California Association of Four Wheel Drive Clubs, 30 IBLA 383, 385 (1977).

In response to the Board's Order, NFC explained in a letter dated October 24, 1994, that its members use the area of the Prineville District for recreational, educational, athletic, and other purposes. It stated that the mission statement for the organization includes language calling for a "ban on the use of pesticides, herbicides, and chemical fertilizers on all public lands." These allegations are not sufficient to establish standing. Under 43 C.F.R. § 4.410(a) an appellant must also show that it is a party to the case. The NFC asserts that it was not previously involved in the decisionmaking process because BLM failed to publish the dates of the comment period and notification of the decision notice. The NFC further contends that BLM failed to give notice directly by mail to those people interested in monitoring these types of projects, including past litigants on weed control projects.

An agency is required to mail notice "to those who have requested it on an individual action." 40 C.F.R. § 1506.6(b)(1); see Utah Wildemess Association, supra, at 129. There is no indication in the record that

3/ Overruled in part not relevant herein by, Utah Chapter of the Sierra Club, 121 IBLA 1, 98 Interior Dec. 267 (1991) (finding approval of application for permit to drill an oil and gas well is not excepted from stay pending appeal).

NFC had requested personal notice of such actions as this by BLM. A person must be both a party to a case and have an adversely affected recognizable interest in order to have a right to appeal to the Board. If either element is lacking, an appeal must be dismissed. Mark S. Altman, supra, at 266. That the members may have used public lands affected by the decision and therefore have been adversely affected is not dispositive of the standing requirement that one be a "party to a case." The Wildemess Society, supra, at 71; Edwin H. Marston, 103 IBLA 40 (1988). The NFC is not a party to a case within the meaning of 43 C.F.R. § 4.410(a), and consequently, its appeal must be dismissed.

Jan Wroncy, Gaia Vision, and Canaries Who Sing did not file a response to the Board's Order and have not established standing. Further, ONRC has not shown that it has standing to appeal. 4/ Therefore, the appeals of Jan Wroncy, Gaia Vision, Canaries Who Sing, and ONRC are also dismissed.

Blue Mountains and Karen Coulter, Appellants in IBLA 94-692 who have established standing, request that Central Oregon Forest Issues Committee (COFIC) be named as co-Appellant in this appeal. In the absence of a showing that COFIC has standing, the request is properly denied. 5/

In accordance with the Board's Order, Karen Coulter states that she is authorized to represent Blue Mountains in her capacity as co-Director of Blue Mountains. We find that she is, therefore, qualified to represent Blue Mountains before the Board under the relevant regulations. 43 C.F.R. § 1.3. Thus, the appeals of Blue Mountains, Karen Coulter (IBLA 94-692), and Oregon Natural Desert Association (ONDA) (IBLA 94-726) are properly before this Board.

Because Blue Mountains and Karen Coulter have filed a joint statement of reasons (SOR), reference to Blue Mountains' arguments will include Karen Coulter's arguments. 6/

4/ The ONRC requested an extension of time to file a response to the Board's Order to establish standing. The ONRC contends that it never received the Order. The Board's records show that ONRC did in fact receive the Order, and in the absence of any showing of why additional time is required to establish standing, its request for extension of time is denied.

5/ The COFIC requests that it be allowed 30 days to establish standing like the other appellants in the Board's Order. This request is denied. The other appellants were allowed additional time because they had filed timely notices of appeal. See 43 C.F.R. § 4.411. The COFIC did not.

6/ Blue Mountains filed several documents in support of its appeal. Appellants' Notice of Appeal, Petition for Stay, and SOR filed July 25, 1994, will be referred to as "Petition for Stay." Appellants' Additional SOR filed Aug. 22, 1994 (pages 1-22), Aug. 29, 1994 (pages 23-44), and Sept. 19, 1994 (pages 45-53) will be referred to as "SOR." Appellants' Additional SOR filed Sept. 22, 1994, will be referred to as "Add. SOR." The ONDA's SOR filed Sept. 23, 1994, will be referred to as "ONDA SOR."

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (1994), requires preparation of an environmental impact statement (EIS) whenever a proposed major Federal action will significantly affect the quality of the human environment. Federal agencies prepare an EA to determine the nature of the environmental impact of a proposed action and whether an EIS will be required. 40 C.F.R. § 1501.4(b), (c). If, on the basis of the EA, the agency finds that the proposed action will produce "no significant impact" on the environment, an EIS need not be prepared. 40 C.F.R. § 1501.4(e); In re Bar First Go Round Salvage Sale, 121 IBLA 347, 354 (1991); Sierra Club Legal Defense Fund, Inc., 84 IBLA 311, 319 (1985). In this case, the record demonstrates that the analysis in EA OR-053-3-062 is tiered 7/ to the analysis found in certain other NEPA documents analyzing the impacts of herbicide use:

This Integrated Weed Management (IWM) EA No. OR-053-3-062 for initiation in FY 1994 is the District-wide update. This EA is tiered to the Northwest Area Noxious Weed Control Program Final Environmental Impact Statement (FEIS-Dec 1985), and Record of Decision (ROD-April 7, 1986), the Supplemental Environmental Impact Statement (SEIS-Mar 1987), and ROD (May 5, 1987) and U.S. 9th Circuit Court [of Appeals] implementation date of April 7, 1988. [8/]

In addition, the noxious weed sections, including the expanded list of EPA-approved herbicides found in the Final Environmental Impact Statement for Vegetation Treatment on BLM Lands (Thirteen Western States), (May 1991) [1991 FEIS], its Appendix (May 1991) and ROD (July 1991) will be incorporated into the District's Integrated Weed Management (IWM) program and this

7/ "Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is: (a) From a program, plan, or policy environmental impact statement to a program, plan or policy statement or analysis of lesser scope or to a site-specific statement or analysis." 40 C.F.R. § 1508.28.

8/ As noted previously (note 2, supra), the herbicide spray program has been the subject of litigation. Effective Mar. 1, 1984, the Department was "enjoined * * * from all spraying of herbicides within * * * the BLM Districts within the State of Oregon, until completion of a Worst Case Analysis, pursuant to * * * 40 CFR § 1502.22 in force [at the time]." NCAP v. Lyng, 673 F. Supp. at 1021. Subsequent to preparation of the 1985 FEIS and the 1987 SEIS including a worst case analysis regarding the impacts from using 2,4-D, Picloram, Glyphosate, and Dicamba, the Government moved to dissolve the injunction as to those herbicides. The motion was granted. NCAP v. Lyng, supra, aff'd, 844 F.2d 588 (9th Cir. 1988). The Ninth Circuit appeal was decided in April 1988.

EA. These additional chemicals will be incorporated only after final approval from the Solicitors Office, U.S. Justice Dept and 9th [Circuit] U.S. Court [of Appeals] review. The expanded list of herbicides are listed in the proposed action (Additional Herbicides p. 12) and their use will be as stipulated in the proposed action of the FEIS (May 1991) and its ROD.

(EA at 1.)

Appellants generally contend that BLM failed to properly assess the environmental impacts of proceeding with the IWM program. Appellants argue that BLM has failed to recognize that the program will result in significant environmental impacts which require deferral of implementation of the project pending preparation of an EIS. More specifically, Blue Mountains contends that the EA does not address the increased risks associated with the IWM program to persons with extreme chemical sensitivities. (Petition for Stay at 19.) Blue Mountains also claims that the NEPA documentation establishes inadequate buffers to mitigate the effects of drift, groundwater contamination, and runoff resulting from herbicide use. (Petition for Stay at 3, 20.) It is asserted by ONDA that the IWM plan does not include adequate mitigation to avoid significant environmental impacts.

Buffers are discussed in the Mitigation Measures portion of the EA. Areas of known or suspected sensitive amphibians will have a minimum 100-foot buffer strip from live water for all herbicide applications, with the exception of the use of Rodeo. (EA at 32.) Further, the EA also establishes mitigating measures in the form of buffer zones designed to protect water resources: no vehicle mounted boom sprayers or handguns will be used within 25 feet of surface (live) water; no booms will be used in riparian areas where weeds are closely intermingled with trees and shrubs; hand spraying equipment may be used to within 10 feet of live water; spreader equipment may be used to apply granular formulations to within 10 feet of the high water line of live water; contact systemic herbicides may be allowed using hand wipe applications on individual plants up to the existing high water line; and aerial application will be done only by helicopter, and a buffer strip of 100 feet will be established between target weed areas and any live water/riparian areas. Additionally, in aerial applications, a 500-foot unsprayed buffer strip will be left next to inhabited dwellings unless waived in writing by the residents. (EA at 33-34.) A 100-foot buffer of unsprayed strip will be left next to croplands and barns. Id. With respect to impacts on people sensitive to chemicals, we note that BLM did address the effects of herbicide use on hypersensitive individuals in the 1991 FEIS Appendix on pages E5-27 to 29 (Effects on Sensitive Individuals).

The environmental consequences of the effects of herbicide use on water quality and water resources were addressed in the EA at 22-23. Regarding impacts to surface water and ground water, BLM found that impacts should not exceed those analyzed in the FEIS and SEIS. (EA at 22.) Further, BLM states that under the proposed action, the low rate of herbicide application and careful application in those critical areas next to riparian and buffer zones with live water situations should result in no

water contamination anywhere. Id. Regarding storm runoff, BLM found that any herbicide escape into a creek or river system due to heavy storm events and surface runoff from previously (recent) sprayed areas would be so small and so heavily diluted by the increased storm flow and sediment load that it is doubtful any could be measured or detected from a nonpoint source. Id. With respect to ground water, BLM found that due to the small amounts of active ingredients applied per acre and small acreages (mostly spot treatments) of herbicide used in the Prineville District's mostly arid and semi-arid precipitation zones (9 to 13 inches), herbicide applications will not impact ground water resources. (EA at 23.)

Blue Mountains also asserts that the EA failed to consider the status or needs of endangered or threatened species or potentially endangered or threatened species. (Petition for Stay at 21-22.) Special status animals are considered in the EA. (EA at 20.) The special status animal species expected to inhabit the Prineville District are listed in Appendix 5. (EA at 54-56.) The record indicates that impacts to special status animals, including fish and aquatic species (such as salmonids, amphibians, or microinvertebrates), which are the most sensitive to environmental impacts dealing with water quality and/or exposure to herbicides, are expected to be very limited. (EA at 21.) This is due to the riparian buffers for mechanical work, to the nature of the herbicides authorized, maximum rates approved for application, application methods, and the use of Glyphosate (Rodeo only) immediately adjacent to or near water. Id. The EA concludes that the required riparian buffers and application stipulations that keep chemicals away from live water, see Mitigation Measures section E at 32-34, will also mitigate and prevent impacts to fish and aquatic species. Id. Finally, the EA notes that risks and impacts to wildlife by the use of IWM practices, including chemicals, have been analyzed in the tiered FEIS (1985) at 45-56, and Appendix K at 201-04, and in the SEIS (1987) at 9-10 and Appendix K at 65-92 and record of decisions (ROD's). (EA at 20.)

Appellants are specifically concerned with impacts to the John Day, Deschutes, and Crooked Rivers. (SOR at 46; ONDA SOR at 2.) Appellant ONDA points out that those rivers are three of the most popular recreation rivers in Oregon. Further, ONDA asserts that the EA fails to recognize the need to properly inform people when and where herbicides will be used. (ONDA SOR at 2.)

In the EA, BLM indicates that weed control activities will be designed to avoid conflicts between recreation use and active weed control efforts. (EA at 24.) Specifically, the EA provides that timing the use of herbicides would have to be coordinated to minimize spraying during high visitor-use periods thereby avoiding impact of direct contact within 24 hours after spraying. (EA at 25.) In this regard, the FEIS to which the EA is tiered provides that designated BLM recreation sites which are treated with herbicides will have signs posted stating the chemical used, date of application, and a contact number for more information. (FEIS 1991, at 3-61.)

Appellants are also concerned about the impacts of herbicides on human health. The BLM addresses the hazards to human health in the EA as follows:

A detailed hazard analysis was conducted for IWM practices and each of the four herbicides proposed for use on pp. 50-55 and Appendix N pp. 209-233 in the FEIS (1985). Additional analysis evaluated impacts including a worst case analysis on pp. 11-24 and Appendix N pp. 93-117 in the supplemental FEIS (1987). In addition, the summary discussion of herbicides and human health from section "2. The Herbicides' Risks to Human Health" in the Supplemental FEIS 1987 ROD and the detailed updated analysis in FEIS 1991 pp 3-64 - 3-94, and Appendix E FEIS 1991 addresses the issues and impacts related to human health and use of (risk) of herbicides.

The cumulative analysis of expected impacts for workers, human and wildland resources along with risk assessment of using these herbicides was addressed in the FEIS 1985 and Supplemental FEIS and their respective RODS. In addition, the impact analysis for additional chemicals as well as the currently four approved herbicides (Picloram, Dicamba, 2,4-D and Glyphosate) were analyzed and updated in the FEIS for Vegetation Treatment on BLM Lands (Thirteen Western States, May 1991, its Appendixes May 1991 and ROD July 1991.

It has been determined that the worst-case is that someone could get cancer from exposure to herbicides used in BLM's IWM. The probability of occurrence was projected for two basic populations considered at risk (occupational and general public). The highest probability of cancer for workers in the extreme-case is on the order of one out of 10,000 workers exposed under the lifetime exposure scenario. The highest probability for the general public is on the order of one out of 10 million individuals exposed in the extreme case scenario presented. Oregon's current population is estimated to be about 2.7 million.

In order to provide a perspective on the risks, comparison to accepted risks or the public's willingness to accept certain voluntary and involuntary risks is needed. Risks of one in 10,000 for occupational (voluntary) and one in one million for the general public (involuntary) are willingly accepted. In fact, human health would benefit by the reduced probability of human contact with noxious and poisonous weeds resulting from control activities.

(EA at 31-32.) The ONDA disagrees with BLM's methodology in assessing risks and criticizes BLM for not referencing the source of the methodology and information. (ONDA SOR at 5.) While ONDA may raise questions concerning BLM's methodology, it has not shown that BLM's methodology is improper or that its information is inaccurate. Appellants' criticisms amount to expressions of disagreement with BLM's conclusions. An appellant's judgment cannot be substituted for that of BLM on the basis of arguable difference of opinion. Robert C. Salisbury, 79 IBLA 370 (1984).

[2] It is well established that the Board will affirm a finding of no significant environmental impact with respect to a proposed action

if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. Bill Armstrong, 131 IBLA 349 (1994); G. Jon Roush, 112 IBLA 293, 297 (1990); Utah Wilderness Association, 80 IBLA 64, 78, 91 Interior Dec. 165, 173-74 (1984). The record must establish that the FONSI was based on "reasoned decision making." Fritiofson v. Alexander, 772 F.2d 1225, 1236 (5th Cir. 1985). When tiering an EA to a prior EIS as was done in this case, BLM need not duplicate relevant aspects of the impact analysis from the prior EIS, but rather may incorporate by reference while focussing on the specific impacts of the proposed action. This process of tiering is particularly appropriate when the sequence of analysis is from a programmatic EIS to an analysis for a proposal of smaller scope. See 40 C.F.R. § 1508.28. The practice of tiering an EA which analyzes the specific impacts of a proposed action which is part of a larger plan of action to an analysis in a programmatic EIS of the broader and cumulative impacts of the program has been held to be appropriate in cases presenting similar factual contexts. Ventling v. Bergland, 479 F. Supp. 174, 179-80 (D.S.D.), *aff'd mem.*, 615 F.2d 1365 (8th Cir. 1979); see Minnesota Public Interest Research Group v. Butz, 498 F.2d 1314, 1323 n.29 (8th Cir. 1974); Southern Utah Wilderness Alliance, 124 IBLA 162, 167-68 (1992) (pipeline right-of-way EA tiered to programmatic EIS for oil and gas leasing); Southern Utah Wilderness Alliance, 122 IBLA 6 (1991) (application for permit drill for six oil and gas wells tiered to the EIS for the relevant resource management plan); Yuma Audubon Society, 91 IBLA 309 (1986) (annual permit for motorcycle race which was the subject of an EIS); In Re Humpy Mountain Timber Sale, 88 IBLA 7 (1985) (timber sale which is part of a larger timber management program).

In the context of a challenge to a FONSI based on an EA tiered to an EIS, the issue before the Board is whether the EA demonstrates that BLM has taken a hard look at the proposed action, identified relevant areas of environmental concern, and made a convincing case that any environmental impacts of the proposed action not previously analyzed in the EIS are insignificant. Southern Utah Wilderness Alliance, *supra*, at 169; see Yuma Audubon Society, *supra*. Thus, one challenging such a finding must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action. G. Jon Roush, *supra*, at 298; Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985). The ultimate burden of proof is on the challenging party. In re Blackeye Again Timber Sale, 98 IBLA 108, 110 (1987). Such burden must be satisfied by objective proof. In re Upper Floras Timber Sale, 86 IBLA 296, 305 (1985). Mere differences of opinion provide no basis for reversal. See Cady v. Morton, 527 F.2d 786, 796 (9th Cir. 1975); Curtin Mitchell, 82 IBLA 275, 282 (1984). We find that Appellants have failed to carry the burden of showing significant environmental impacts not considered in the 1985 EIS, the 1987 SEIS, and the 1991 FEIS to which the analysis in the EA is tiered. ^{9/}

^{9/} In many instances Appellants' criticisms and concerns reflect, in essence, disagreement with BLM's conclusions. They fall short, however, of establishing that BLM's actions were clearly erroneous or contrary to

Both Blue Mountains and ONDA also contend that the EA is deficient because it failed to offer a full range of alternatives. (Petition for Stay at 23; ONDA SOR at 2.) The ONDA submits that two new techniques for treating unwanted vegetation are effective and nonchemical, one using steam and the other using infrared heat. (ONDA SOR at 2.)

The EA addressed two alternatives. Alternative 1, the proposed action, is to implement an updated/new IWM program which would emphasize a proactive (all available control methods) for an ecosystem based approach for control (eradication) of noxious weeds on all public lands within the Prineville District. (EA at 3.) Alternative 2 is exactly like alternative 1 except under alternative 2 the use of herbicides would not be permitted in any Wilderness Study Area or Wilderness Area. Regarding other options, BLM explained that the alternatives of "No Aerial Herbicide Application," "No Use of Herbicides," and "No Action" have been analyzed in the NW Area Noxious Weed Control FEIS (1985), and Supplemental FEIS (1987) and their respective ROD's. No further discussion of these alternatives is necessary in the EA, BLM reasons, because the conclusions and impacts would be the same as those addressed in the other documents. The "No Action" alternative is defined as "no noxious weed control efforts being applied to public lands." This alternative was not considered to be viable by BLM, due to the requirements of Federal, state, and county laws and regulations which mandate active control of known and newly discovered noxious weed infestations. (EA at 15.)

An EA is only required to include a "brief" discussion of "alternatives" as required by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (1994). 40 C.F.R. § 1508.9(b). Section 102(2)(E) of NEPA requires a Federal agency to describe "appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." We find that the EA and the NEPA documents to which it is tiered describe a range of alternatives "sufficient to permit a reasoned choice." California v. Bergland, 483 F. Supp. 465, 488 (E.D. Cal. 1980); quoting Brooks v. Coleman, 518 F.2d 17, 19 (9th Cir. 1975); Western Colorado Congress, 130 IBLA 244, 247-48 (1994). A mere disagreement or difference of opinion as to the proper alternative will not suffice to establish error in BLM's choice of alternatives. In Re Long Missouri Timber Sale, 106 IBLA 83 (1988).

The ONDA asserts that elimination of the causes of noxious weeds is the preferred treatment. According to ONDA, the IWM fails to correctly identify the causative activities and fails to consider the viable and preferred alternative of halting the activities which have brought the

fn. 9 (continued)

applicable law. The Board gives deference to BLM actions which are based on its expertise and which are taken pursuant to defined statutory authority where those actions are supportable. As noted previously, an appellant's judgment cannot be substituted for that of BLM on the basis of arguable differences of opinion. Robert C. Salisbury, supra, at 379.

noxious weed species into the Prineville District. (ONDA at 6.) A similar argument was made in the (NCAP) litigation. 10/ The NCAP challenged the NEPA documents because they did not contain an alternative "addressing the causes, not just the symptoms, of noxious weeds in an EIS designed to control and eradicate noxious weeds." In affirming the district court's decision the circuit court stated:

The district court accurately summarized the challenge:

"Plaintiffs want the BLM to resolve the noxious weed problem with an integrated pest management (IPM) process that considers the use of herbicides only as the last feasible alternative . . . or through altered grazing patterns." 673 F.Supp. at 1024 (citations omitted).

The district court determined that the BLM and Northwest simply disagree on the best management policy and "[s]o long as the BLM's decisions are not irrational or contrary to law, it may manage the public lands as it sees fit." Id. (citing Natural Resources Defense Counsel v. Hodel, 819 F.2d 927, 930 (9th Cir. 1987) (NRDC)).

NCAP v. Lyng, 844 F.2d at 591. We agree with the court's finding that such a challenge regarding alternatives is an attempt to debate BLM policy which is not the subject of a NEPA action. Id.

To the extent not expressly or impliedly addressed in this decision, all other arguments raised by Appellants have been considered and are rejected. See National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954); Glacier-Two Medicine Alliance, supra, at 156.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeals of NFC, ONRC, Jan Wroncy, Gaia Vision, and Canaries Who Sing are dismissed, and the BLM decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge

10/ See note 2/, supra.

